

INITIAL STATEMENT OF REASONS

HEARING DATE(S):

August 10, 2021
WebEx/Teleconference

**SUBJECT MATTER OF THE
PROPOSED REGULATIONS:**

Record Retention Requirements,
Selection Process, Hiring Process,
Determining Merit and Fitness During the
Hiring Process, Skills-Based Certification

SECTIONS AFFECTED:

Title 2, Chapter 1, California Code of
Regulations Adopt Section 13 and Amend
Sections 26, 78, 78.1, 249, 250, and
250.1

In this rulemaking action, the State Personnel Board (Board) proposes to adopt section 13 and amend sections 26, 78, 78.1, 249, 250, and 250.1 of Title 2, Chapter 1, of the California Code of Regulations.

PURPOSE, NECESSITY, RATIONALE, AND BENEFITS OF REGULATORY ACTION:

Background:

Existing Board rules define and describe the civil service hiring and selection process. While prior changes to these regulations provided clarity and consistency specifically to the hiring process, certain aspects still remain burdensome and require more streamlining in order to promote a strong and nimble merit civil service system. Further clarity will help appointing powers accurately interpret and apply the hiring process requirements.

Anticipated Benefits of the Regulatory Action:

The anticipated benefits of this regulatory action include: (1) making the hiring process a more flexible and qualitative process designed to determine which eligible candidate is the best fit and (2) conserving the fiscal interests of the state by clarifying the Board's hiring and selection process standards.

Discussion of Each Amendment:

The purpose of amending these sections is to clarify the hiring and selection process. While it is appropriate for the state's exam process to utilize rigid scoring and ranking, along with pre-determined questions and answers, the hiring process should be a more

Initial Statement of Reasons

Adoption of Section 13 and Amendments to Sections 26, 78, 78.1, 249, 250, and 250.1

flexible and qualitative process designed to determine which eligible candidate is the best fit for the specific position to be filled. The proposed amendments to the Board's rules discussed below convey this approach.

I. Adopt § 13. Shall, Should, May, and Best Practices

The purpose of this regulatory action is to define the meanings of the words "shall," "should," "may," and "best practices," so that appointing powers may best determine whether compliance with a law, regulation, rule, or policy is achieved.

Section 13 will read as: "In determining whether compliance with a law, regulation, rule or policy is achieved, the following definitions apply:

- (a) "Shall" means action which is necessary to achieve compliance and no alternative courses of action are acceptable to achieve compliance.
- (b) "Should" means action which is preferable to achieve compliance, while recognizing that there are circumstances where alternative courses of action are open to users.
- (c) "May" means action which is an acceptable course to achieve compliance, but alternative courses of action are also acceptable.
- (d) "Best Practices" means a technique or methodology that, through experience and research, has been proven to reliably lead to a desired result, while recognizing that alternative techniques or methodologies are open to users."

II. Amend § 26. Record Retention Requirements.

Existing Board rule, California Code of Regulations, title 2, section 26, requires that appointing powers retain numerous records for a minimum of five years from the date of creation of the record. Records related to merit, selection, and appointments shall be retained. (Cal. Code Regs., tit. 2, § 26, subd. (a)(3).) The purpose of this regulatory action is to clarify the types of merit, selection, and appointment records necessary for retention. Specific reference to pre-employment background and reference checks, application screening criteria, interview rating criteria, interview questions, and interview scoring or rating sheets, shall be removed from the subdivision and replaced with "all documentation related to selection instrument(s) or procedure(s) used." This proposed change conforms to and reflects proposed revisions to sections 249 and 250 which support a more flexible and qualitative hiring process.

Subdivision (a)(3) will now read as: "Merit, selection, and appointment records, including, but not limited to, the duty statement of the position being filled, all job announcements and bulletins, all applications received for the job opening, ~~pre-employment background and reference checks, minimum qualification verifications, application screening criteria, interview rating criteria,~~ all documentation related to the selection instrument(s) or procedure(s) used, ~~interview questions, interview scoring or rating sheets,~~ records documenting the reasons why the selected candidate was hired for the position, the Request for Personnel Action, the Notice of Personnel Action, probationary reports,

Initial Statement of Reasons

Adoption of Section 13 and Amendments to Sections 26, 78, 78.1, 249, 250, and 250.1

loyalty oaths and oaths of office, and history of mandated training. These records also include employee disciplinary records, except the minimum five-year record retention requirement does not apply to specified disciplinary records if Government Code section 19589, a stipulated settlement agreement between the employee and appointing power, or a collective bargaining agreement between the state and a recognized employee organization provides otherwise; and”

The rule will then continue on to subdivision (a)(4).

III. Amend § 78. Selection Process.

Existing Board rule, California Code of Regulations, title 2, section 78, requires that the selection process include the screening and rating of a candidate's qualifications. However, “the hiring process” as defined by proposed section 78.1 already includes reference to the appointing power’s obligation to use activities, instruments, or procedures that fairly and objectively assess a candidate’s qualifications. As such, specific reference to the “the screening and rating of a candidate's qualifications” is unnecessary and redundant.

Accordingly, section 78 will now read as: ““Selection process” means the procedures, practices, and activities used by the appointing power to appoint and promote employees in the state civil service and includes the phases of recruitment, examination, establishment of eligible lists, ~~screening and rating of a candidate's qualifications~~, the hiring process, and any required probationary period.”

IV. Amend § 78.1. Hiring Process.

In existing Board rule, California Code of Regulations, title 2, section 78.1, the hiring process is defined as having both performance tests and written tests. This has led to hiring authorities conflating the components of the examination process with the hiring process. Therefore, the section shall be amended so that there is no mention of “tests,” which should eliminate any confusion. Language will also be added to clarify the appointing power’s discretion to utilize whatever activities they deem appropriate to assess candidates’ qualifications during the hiring process.

Section 78.1 will now read as: ““Hiring process” means such activities as interviews, performance demonstrationtests, written exercisestests, role plays, simulations, reference and background checks, as well as the use of any other instrument or procedure appointing powers may designate appropriate to assess fairly and objectively assess a candidate's qualifications to be successful in the position the appointing power is hiring to fill. The hiring process is distinct and separate from the examination process.”

V. Amend § 249. Standard Measurement Criteria.

Initial Statement of Reasons

Adoption of Section 13 and Amendments to Sections 26, 78, 78.1, 249, 250, and 250.1

The Board proposes to retitle California Code of Regulations, title 2, section 249, "Job-Related Criteria," and delete the term "standard measurement criteria" from the text. While the Board recognizes that job-related criteria is essential to administering a hiring process based on merit, the term standard measurement criteria has been misinterpreted to require a hiring process that is overly rigid and labor intensive. For example, some appointing powers have misinterpreted the term to require hiring managers to spend an inordinate amount of time creating complex numerical criteria to score applicants in order to document which applicants are selected for interview. This is unnecessary. A document describing what job-related criteria was used to select candidates for interview should be sufficient. Moreover, appointing powers that utilize complex, numerical application screening criteria do not always administer the scoring consistently across applicants and the process cannot be objectively duplicated, especially when the criteria is poorly defined. These facts coupled with the risk of simple arithmetic errors overly complicate the hiring process, create needless barriers for hiring departments to select candidates that will be most successful in the position, and may unfairly disadvantage certain candidates over others.

As such, section 249 will now read as: "The appointing power shall ~~use standard measurement criteria for~~ assessing and comparing the qualifications of candidates based upon job-related information about each candidate, such as work history, education, training, experience, references, background checks, and competencies. Regardless of the selection instruments or procedures used, the job-related information used to assess and compare each candidate shall be applied consistently and equitably."

VI. Amend § 250. Determining Merit and Fitness During the Hiring Process.

Existing Board rule, California Code of Regulations, title 2, section 250, requires that the reasons for the hiring decision be documented. The Board proposes to amend this regulation to specify that the documentation may include a memorandum summarizing and explaining the basis for the hiring decision.

Moreover, the Board recognizes that, while a hiring interview may be the appropriate selection method in many cases, other selection instruments, or a combination of selection instruments may be appropriate in some cases depending on the nature of the position being filled and/or the size and make-up of the applicant pool. As such, section 250 will be amended to clarify that the hiring process must include at least one or more selection instrument.

Other minor proposed changes to section 250 provide consistency within the proposed Board rules discussed herein.

Subdivision (b) will be read as: "The hiring process for eligible candidates ~~chosen for job interviews~~ shall be competitive and involve an assessment of the qualifications of the candidates and be designed and administered to hire candidates who will be successful. ~~Interviews~~ The hiring process shall be conducted by using job-related criteria. The hiring

Adoption of Section 13 and Amendments to Sections 26, 78, 78.1, 249, 250, and 250.1

Subdivision (c) will read as: “As a best practice, Prior to making the hiring decision, the appointing power should review the official personnel file of the candidate who is a current state employee and conduct reference checks and ~~review the official personnel file of the candidate, regardless of whether the candidate is employed inside or outside of state service currently an employee of the state or employed outside the state.~~”

VII. Amend § 250.1. Skills-Based Certification.

Subdivision (h) will read as: “Hiring departments shall utilize a job-related hiring process that includes one or more of the selection instruments identified in section 250, subdivision (b), structured interview process for purposes of conducting hiring interviews, and shall verify minimum qualifications and perform reference checks for all prospective hires. In order to ensure that ~~t~~The hiring process is fair and competitive, the hiring interviews shall use a job-related structured interview process that shall conform to the following minimum standards: (1) relevant criteria shall be developed for determining which candidates shall be selected to interview for the hiring process; (2) a series of job-related ~~questions~~ criteria shall be developed to assess the fitness and qualifications of each candidate to perform the duties of the position ~~in question~~ to be filled; (3) valid criteria shall be developed for ~~scoring the candidates’~~ evaluating each candidate’s responses to the interview questions performance during the hiring process; and (4) each candidate shall be required to respond to the same interview questions the same selection method shall be applied consistently and equitably to each candidate. As a best practice, the

Initial Statement of Reasons

Adoption of Section 13 and Amendments to Sections 26, 78, 78.1, 249, 250, and 250.1

appointing authority should conduct reference checks and, if the candidate is a current state employee, review the official personnel file of the candidate prior to appointing the selected candidate. The appointing authority shall also develop a summary of the hiring process which shall include a discussion of the job-relatedness and structure of the ~~interview~~-hiring process.”

ECONOMIC IMPACT ASSESSMENT:

The proposed regulations set standards only related to the Board’s appeal procedures. Therefore, the adoption of these regulations will not:

1. Create or eliminate jobs within California.
2. Create new businesses or eliminate existing businesses within California.
3. Affect the expansion of businesses currently doing business within California.
4. Affect worker safety or the state’s environment.

The amending of these regulations, however, will have a positive impact on the general health and welfare of California residents in that the benefits of this regulatory action includes an updated civil service hearing process.

TECHNICAL, THEORETICAL AND/OR EMPIRICAL STUDIES, REPORTS OR DOCUMENTS:

None.

SPECIFIC TECHNOLOGIES OR EQUIPMENT:

This regulation does not mandate the use of specific technologies or equipment.

EFFORTS TO AVOID CONFLICT WITH AND DUPLICATION OF FEDERAL REGULATIONS:

Not applicable. The Board is not a department, board, or commission within the Environmental Protection Agency, the Resources Agency, or the Office of the State Fire Marshall.

SIGNIFICANT ECONOMIC IMPACT ON BUSINESS:

The proposed regulations set a standard only related to Board’s appeal procedures. Accordingly, it has been determined that the adoption of the proposed regulations would not have a significant, statewide adverse economic impact affecting California businesses, including the ability of California businesses to compete with businesses in other states.

Initial Statement of Reasons

Adoption of Section 13 and Amendments to Sections 26, 78, 78.1, 249, 250, and 250.1

CONSIDERATION OF ALTERNATIVES

The Board has initially determined that no reasonable alternatives it has considered or that have been otherwise identified and brought to the attention of the Board would be more effective in carrying out the purposes for which the instant action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.